

ANNUAL HEARING

Before
The Joint Judiciary Committee
Of The Colorado General Assembly



APPEARING ON BEHALF OF THE AGENCY:

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER

JAMES KARBACH
Director of Legislative Policy and External Communication

Thursday, January 19, 2023

Hearing Agenda

Office of the State Public Defender

Introductions

Opening Comments

- Introductory remarks
- Our role under the United States and Colorado Constitutions

Mission

The mission of the Office of the State Public Defender is to defend and protect the rights, liberties, and dignity of those accused of crimes who cannot afford to retain counsel. We do so by providing constitutionally and statutorily mandated representation that is effective, zealous, inspired and compassionate.

OSPD Enabling Legislation:

The general assembly hereby declares that the state public defender at all times shall serve his clients independently of any political considerations or private interest, provide legal services to indigent persons accused of crime that are commensurate with those available to nonindigents, and conduct the office in accordance with the Colorado Rules of Professional Conduct and with the American Bar Association standards relating to the administration of criminal justice, the defense function. C.R.S. 21-1-101(1).

Vision

It is the vision of the Office of the State Public Defender that every OSPD client served receives excellent legal representation through the delivery of high-quality legal services and compassionate support from a team of dedicated Public Defenders.

Current Budget

To support the OSPD in the representation of its FY 2022-23 projected caseload, the OSPD was appropriated \$130,103,751 and 1050 FTE. This is comprised of approximately 577 attorneys, 173 investigators, 69 paralegals, 23 social workers, 154 administrative assistants, and 54 centralized management and support positions.

The OSPD functions as a single program devoted to providing criminal defense representation to indigent persons charged with crimes where incarceration is a possibility, except where there is a conflict of interest. Courts appoint the OSPD when a person qualifies for public defender services pursuant to statute, applicable case law and Chief Justice Directives.

Because our mission is to provide legal representation in criminal cases to people who are indigent, we are a service-oriented agency. Eighty-five percent of our budget is spent on personal services, with the remaining fifteen percent supporting mandated and operational costs. Accordingly, any changes to our personal services budget, such as those made through legislative action on common policies and new legislation, have a tremendous effect on our overall appropriation.

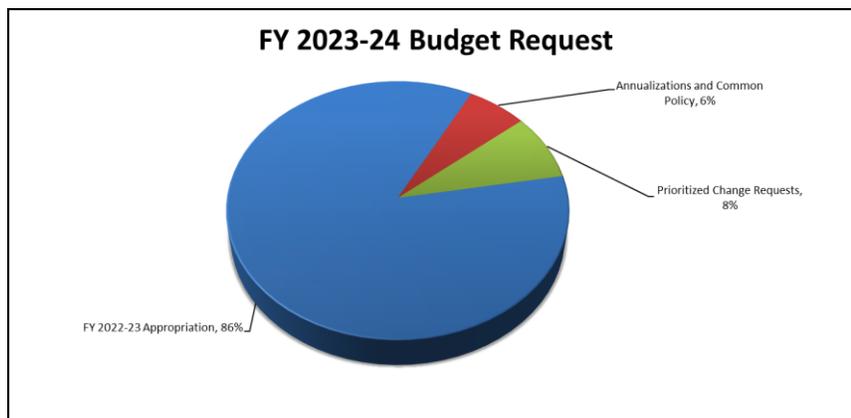
In addition, our personal services budget is driven by attorney FTE need because of the workload associated with the increase in the agency’s caseload. Prior to the pandemic, the number of cases handled by the OSPD steadily grew with significant increases seen in its felony cases. Although the total number of cases dropped over the COVID pandemic, this is no longer the case. As we have emerged from the pandemic, the number of cases (primarily both the higher-level felony and misdemeanor cases) we are handling are returning to pre-COVID levels and are projected to continue upward as shown in the charts below. Felony cases require the greatest attorney effort, time and dedication of resources.

The major driver in OSPD’s Budget Request for FY 2023-24 is the OSPD salary survey, conducted by an independent compensation firm, Logic Compensation Group. The survey revealed a significant gap in salaries between the OSPD and the public sector market in Colorado. This year’s budget request aims to both put the OSPD in a more competitive position with its public sector counterparts throughout the state and slow the attrition rate among developing and experienced staff

FY 2023-24 Budget Request

The total FY 2023-24 budget request for the Office of the State Public Defender (OSPD) is \$155,047,210 and 1,098.1 FTE. Consistent with our service focus, each one of our SMART Act goals ties to providing quality representation for our indigent clients. We have prioritized requests of \$19,271,654 and 4.1 FTE.

- **FY 2022-23 Appropriation of \$130,103,751**
PLUS Annualizations of \$3,250,573
PLUS Common Policy of \$2,421,232
- **FY 2023-24 Base Request of \$135,525,556**
PLUS Change Request #1 for \$17,676,175*
PLUS Change Request #2 for \$705,612
PLUS Change Request #3 for \$539,867
PLUS Change Request #4 for \$350,000
- **FY 2023-24 Budget Request of \$155,047,210**



* FY 2023-24 Budget Amendment #1, Salary Survey

Budget Priority & Challenges

The OSPD continually reviews, analyzes and prioritizes its needs to efficiently use its limited resources in a manner that still accomplishes our mission. The primary priority for our FY 2023-24 budget is to close the significant gap in salaries compared to the public sector market in Colorado and put the OSPD in a more competitive position with its counterparts throughout the state. The OSPD contracted with an independent compensation firm, Logic Compensation Group, to conduct a 2022 compensation study. This study revealed that, effective July 1, 2022, the OSPD's pay structure is significantly below the market average for 98 percent of its staff within the regional offices.

Over the past few years, the OSPD has been hit particularly hard by increasing attrition rates. Factors outside the agency's control such as high caseloads, the COVID-19 pandemic, and higher inflation have exacerbated already high attrition rates. Attrition is always a concern as it drains agency expertise and strains offices and resources, which damages the OSPD's ability to meet its mission of providing effective representation to clients. The loss of experienced employees means the loss of investment of state resources and requires the OSPD to spend more time and resources on recruitment and training. The OSPD attrition rate over the last five years has been driven by attorneys and administrative assistants, but in the last two years all job categories have seen increased attrition. In FY 2021-22, the OSPD's regional offices, employing 95 percent of the agency's total FTE, experienced a 22.5 percent attrition rate. One important component of the attrition rate is not only the overall rate but also the experience level of those leaving. For example, in the attorney group, experienced attorneys typically carry the most complex and serious cases, mentor and train beginning attorneys, and take on additional workload as they achieve a more independent level of practice.

If the significant market lag of the OSPD pay structure is not addressed, the attrition rate will likely continue to increase. Employees who have left the agency have had opportunities elsewhere in the public sector for higher pay with the equivalent amount of experience. Below-market pay has prevented employees from moving ahead financially, especially those struggling with common issues like the effects of inflation, higher cost of living, sizable student loan debt, and supporting young families.

A high attrition rate of seasoned staff contributes to high caseloads, which inevitably exacerbates stress levels, damages morale throughout the agency, and creates the risk that the OSPD will be unable to fulfill its obligations to clients. Increased attrition has an exponential effect on the OSPD's duty to provide effective representation consistent with the mandates required by constitution, statutes, and rules.

Legislation

OSPD supports legislation that will improve fairness and just outcomes for our clients who are involved with the criminal legal system. Our agency always engages, upon request, with legislators seeking support and information for bills that will protect the constitutional rights of persons, support the disenfranchised and provide better and real opportunities for our clients who suffer from the failure of systems that do not adequately address poverty, mental illness and addiction.

Recent legislative acts that impact OSPD's operations include:

HB21-1280, which mandated bail setting within 48 hours of arrest. OSPD continues to work with judicial districts and the State Court Administrator's Office to develop the systems necessary to achieve the goals of this bill and to work within our agency to provide the necessary client contact/courtroom coverage with our current staff or through contract services. OSPD is committed to ensuring this mandate is fairly and consistently implemented across the state and that our staff and lawyers with whom we contract provide effective assistance of counsel in these hearings.

Through the enactment of SB22-188, the legislature provided funding to support mental health support for district attorney staff and OSPD employees. This supported OSPD's goal to support our staff's well-being as we carry out our mission in courts throughout the state. OSPD's statutorily required report on specific implementation of this funding is separately outlined.

Committees, Boards, Task Forces, & Specialty Courts

OSPD actively engages in several committees, boards, task forces, and specialty courts throughout the state to improve fairness and operation of the courts. Over the last several years, the workload from serving in these areas has increased.

Several legislative acts have created (or reauthorized) task forces, commissions, or subcommittees in which OSPD actively participates, including:

- The Jail Standards Commission to make recommendations about Jail Standards created by HB22-1063.
- The Pre-Adolescent Services Task Force to study gaps in services to 10 to 13 year-olds and to make recommendations about those gaps, created by HB22-1131.
- The Task Force Concerning the Treatment of Persons with Behavioral Health Disorders in the criminal and juvenile justice systems, reauthorized by SB22-021.
- A new subcommittee in CCJJ created by HB22-1368 to study several topics surrounding the possible use of community corrections for individuals charged with misdemeanors.

OSPD remains heavily involved in the work of the Commission on Criminal & Juvenile Justice. In addition to being a voting member of the commission, OSPD has members participating in all of the active subcommittees.

Some of the additional committees, boards, and task forces that members of OSPD serve on include:

- The state-level Correctional Treatment Board
- All the local Correctional Treatment Boards throughout the judicial districts
- Community Corrections Boards throughout the state,
- Criminal Justice Coordinating Committees in several judicial districts
- The Sex Offender Management Board
- Task Force Concerning the Treatment of Persons with Behavioral Health Disorders
- The Statewide SB-94 Advisory Committee
- Local SB-94 Boards
- The Pre-Adolescent Services Task Force
- The Jail Standards Task Force
- Committees of the Colorado Supreme Court including:
 - The Public Access Committee
 - The Rules of Appellate Procedure Committee
 - The Rules of Criminal Procedure Committee
 - The Advisory Committee on the Rules of Evidence

- Public Access Committee

In addition, OSPD attorneys work in specialty treatment courts. This work often entails specialized training and involves attending meetings and staffings in addition to courtroom work. There are several types of specialty courts which operate in some districts across the state:

- Substance Abuse courts
- DUI courts
- Veterans courts
- Behavioral Health courts
- Competency dockets

SMART ACT - Goals, Strategies and Performance Measures

In order to achieve our mission of providing high-quality, effective criminal defense representation for each of our clients, the OSPD ensures that our goals, strategies and measures address our people and our process. To this end, we have developed three overarching goals, five strategies and nineteen measures, all focused on improving service to our clients.

Although we have multiple connections among our goals, strategies and measures, they all tie directly to our vision and our mission. Furthermore, as part of our organizational infrastructure planning, these components are continually reviewed and further refined.

Goals:

1. Provide effective attorney services and advocacy in both the trial and appellate courts throughout the state of Colorado for indigent clients.
2. Hire and retain enough quality staff to effectively manage the ever- increasing workload in each office in the state.
3. Provide a high quality and quantity of staff development, training, technology support and other resources to adapt our response to the constantly changing criminal legal system so that our advocacy and legal services are commensurate with those available for non-indigent persons as is required by our statute.

Strategies:

1. Hire a sufficient number of high-quality staff and retain an adequate level of experienced staff in order to effectively manage the assigned caseload.
2. Track and analyze trends in caseloads and adjust staffing levels.
3. Provide training to address the changing legal climate.
4. Continually evaluate administrative processes and organizational infrastructure needs such as office space, technology, and staffing.
5. Work cases efficiently, while providing high-quality, effective representation.

Measures:

Input

1. Number of new trial court cases.
2. Number of active trial court cases.
3. Percent of trial court attorney staff allocated vs. total required for closed trial court cases.
4. Number of attorney applications received.
5. Percent of total attorney staff allocated versus total required for closed trial court cases and active appellate cases.
6. Annual rates of attrition.
7. Percent of experienced, fully capable staff.
8. Percent compliance with minimum standards for total staffing requirements.
9. Established standard percentages for reasonable staff supervision, management and development.
10. Number of new appellate cases.
11. Number of active appellate cases (cases awaiting filing of Opening Brief).
12. Percent of appellate attorney staff allocated vs. total required for active appellate cases.

Output

13. Number of trial court cases closed.
14. Days of training provided.
15. Number of CLE credit hours provided.
16. Hours of ethics training provided, focusing on Colorado criminal law.
17. Number of administrative processes and organizational infrastructure evaluations performed.
18. Number of appellate cases for which an Opening Brief has been filed.
19. Number of backlogged appellate cases.

Performance Measures

		FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27
		(actual)	(actual)	(actual)	(actual)	(projected)	(projected)	(projected)	(projected)	(projected)
MEASURE 1:	Target	148,664	147,479	119,229	136,144	135,034	139,085	143,258	147,556	151,982
Number of new trial court cases.	Actual	144,219	124,586	113,453	127,391					
MEASURE 2:	Target	189,075	189,760	165,029	175,221	184,968	190,517	196,233	202,120	208,184
Number of active trial court cases.	Actual	185,762	168,512	159,292	179,581					
MEASURE 3:	Target	100%								
Percent of trial court attorney staff allocated vs. total required for closed trial court cases.	Actual	81%	82%	80%	79%					
MEASURE 4:	Target	485	500							
Number of attorney applications received.	Actual	520	524	500	410					
MEASURE 5:	Target	100%								
Percent of total attorney staff allocated vs. total required for closed trial court cases and appellate cases.	Actual	81%	82%	81%	80%					
MEASURE 6:	Target	12%								
Annual rates of attrition:										
Attorneys	Actual	18%	12%	15%	21%					
Investigators	Actual	7%	7%	9%	10%					
Administrative Assistants	Actual	26%	22%	19%	30%					
Total All Employees	Actual	17%	12%	14%	19%					
MEASURE 7:	Target	70%								
Percent of experienced, fully capable staff (journey level or higher):										
Attorneys	Actual	39%	37%	39%	39%					
Investigators	Actual	52%	56%	57%	53%					
Administrative Assistants	Actual	46%	43%	41%	36%					
Total All Employees	Actual	44%	43%	45%	43%					
MEASURE 8:	Target	100%								
Percent compliance with minimum standards for total staffing requirements.	Actual	82%	83%	83%	80%					
MEASURE 9:	Target	12%								
Maintain established standard percentages for reasonable staff supervision, management and development.	Actual	9%	10%	10%	9%					
MEASURE 10:	Target	528	574	524	450	480	495	510	525	541
Number of new appellate cases.	Actual	563	514	256	379					

		FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27
		(actual)	(actual)	(actual)	(actual)	(projected)	(projected)	(projected)	(projected)	(projected)
MEASURE 11:	Target	1,887	1,938	1,870	1,627	1,629	1,596	1,590	1,596	1,613
Number of active appellate cases.	Actual	1,922	1,878	1,602	1,556					
MEASURE 12:	Target	100%								
Percent of appellate attorney staff allocated vs. total required for appellate cases awaiting filing of initial brief.	Actual	82%	81%	85%	84%					
MEASURE 13:	Target	145,909	145,337	105,353	129,507	134,333	138,362	142,512	146,786	151,189
Number of trial court cases closed.	Actual	141,876	122,712	107,099	130,421					
MEASURE 14:	Target	133	144	132	132	193	193	193	193	193
Days of training provided.	Actual	179	144	69	182					
MEASURE 15:	Target	15								
Number of CLE credits provided to all attorneys.	Actual	16	21	12	14					
MEASURE 16:	Target	3								
Hours of ethics training provided, focusing on Colorado criminal law.	Actual	3	6	2.2	2					
MEASURE 17:	Target	15								
Number of administrative processes and organizational infrastructure evaluations performed.	Actual	15	12	15	15					
MEASURE 18:	Target	451	447	447	358	343	378	378	378	378
Number of appellate cases for which an Opening Brief has been filed.	Actual	381	454	433	310					
MEASURE 19:	Target	486	592	490	271	324	324	336	360	395
Number of backlogged appellate cases.	Actual	603	530	287	299					